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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/804,729

03/13/2001

Kannan Srinivasan

696.001

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35195

7590

04/19/2006

FERENCE & ASSOCIATES  
409 BROAD STREET  
PITTSBURGH, PA 15143

EXAMINER

NELSON, FREDA ANN

ART UNIT

PAPER NUMBER

3639

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	09/804,729		SRINIVASAN ET AL.	
	Examiner		Art Unit	
	Freda A. Nelson		3639	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

The amendment received on March 27, 2006 is acknowledged and entered. Claim 1 has been amended. No claims have been added. Claims 1-16 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 27, 2006 has been entered.

#### ***Response to Amendment and Arguments***

Applicant's arguments filed March 27, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a model that reflects real-time market sensitivities) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Herz et al do not disclose receiving configuration data from an Internet merchant that operates the web site, the examiner respectfully disagrees. Herz et al. disclose that *"just as in other price-point determination systems, vendors may share their databases of relevance feedback on <shopper, offer> pairs. Thus, when the system is evaluating a proposed <shopper, offer> pair to decide whether it is worth making a particular offer to a particular shopper, it has a better chance of finding similar <shopper, offer> pairs by consulting the several vendors' databases"* (see paragraph [0278]).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As for claim 1, the examiner is unable to determine by the claim language "a model that is able to reflect real-time market sensitivities" if the model actually reflects real-time market sensitivities.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Herz et al. (US PG Pub. 2001/0014868).

As for Claim 1, Herz et al. discloses a method comprising:

(a) receiving configuration data from the Internet merchant (paragraphs [0004]-[0005], [0278]); FIG. 1)

(b) randomly sampling visitors to the Internet website according to the configuration data to create a model that is able to reflect real-time market sensitivities (see Supra paragraph and [0006], [0021], [0308]-[0309]);

(c) determining an optimal price using the model acquired in step (b) by electronic manipulation using a processor (see Supra paragraphs, [0236], [0240]-[0241]); and

(d) displaying the optimal price to the Internet merchant (see Id.).

As for Claim 2, Herz et al. further disclose the method, wherein said configuration data includes sampling parameters (see paragraphs [0004]-[0006], [0021]).

As for Claim 3, Herz et al. further disclose the method, where said configuration data includes potential prices that are offered to the sampled population in step (b) (paragraphs [0021], [0236], [0241]).

As for Claim 4, Herz et al. further disclose the method, wherein said configuration data includes whether the sampling is to be performed continuously or at discrete intervals (see Supra paragraphs).

As for Claim 5, Herz et al. further discloses the method, wherein said configuration data includes data for segmenting the population into clusters (paragraphs [0005]-[10006]).

As for Claim 6, Herz et al. further discloses the method, wherein said configuration data includes a minimum threshold for automatically propagating an optimal price (paragraphs [0021], [0236], [0241]).

As for Claim 7, Herz et al. further discloses the method, wherein said random sampling is performed on the entire population of visitors to the website (paragraphs [0004]-[0006]).

As for Claim 8, Herz et al. further discloses the method, wherein visitors to the website are grouped, and each group is sampled separately (see Id.).

As for Claim 9, Herz et al. further discloses the method, wherein an optimal price is determined for each group (paragraphs [0006], [0021], [0236], [0241]).

As for Claim 10, Herz et al. further discloses the method including updating the website such that a visitor is offered the optimal price determined in step (c) according to the visitor's group (see Id.).

As for Claim 11, Herz et al. further discloses the method, wherein groups are determined based upon prior purchasing behavior (see Supra paragraphs).

As for Claim 12, Herz et al. further discloses the method, wherein groups are determined based upon demographic characteristics (paragraphs [0005]-[0006]).

As for Claim 13, Herz et al. further discloses the method, wherein step (c) comprises determining a price that optimizes profit (paragraphs [0236], [0241]).

As for Claim 14, Herz et al. further discloses the method including: automatically updating the website to use the optimal price determined in step (c) (see Id.).

As for Claim 15, Herz et al. further disclose the method including: automatically updating the website to use the optimal price determined in step (c) if the optimal price meets a minimum threshold (see Id.).

As for Claim 16, Herz et al. further discloses the method, wherein the minimum threshold is that the optimal price determined in step (c) is a predetermined percentage better than a currently offered price for the product (paragraphs [0005]- [0006], [0021], [0236], [0241]).

### ***Conclusion***

3. The examiner has cited prior art of interest, for example:

1) Halbert et al. (US Patent Number 6,101,484), which disclose a dynamic market equilibrium management system, process and article of manufacture.

2) Jenkins et al. (US Patent Number 6,285,983), which disclose Marketing systems and methods that preserve consumer privacy

3) Manganaris et al (US Patent Number 6,976,000), which disclose the Method and system for researching product dynamics in market baskets in conjunction with aggregate market basket properties

4) "Pilot Software Announces Retail Performance Monitor; Pre-Defined Retail Applications for Merchandise, Operational Analysis" Nov. 23, 1998; Business Wire. New York. pg. 1

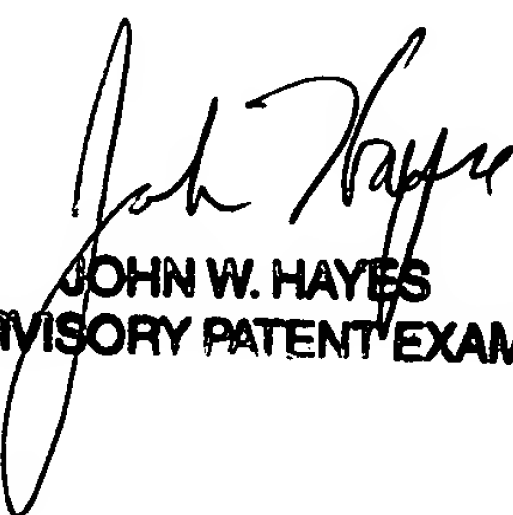
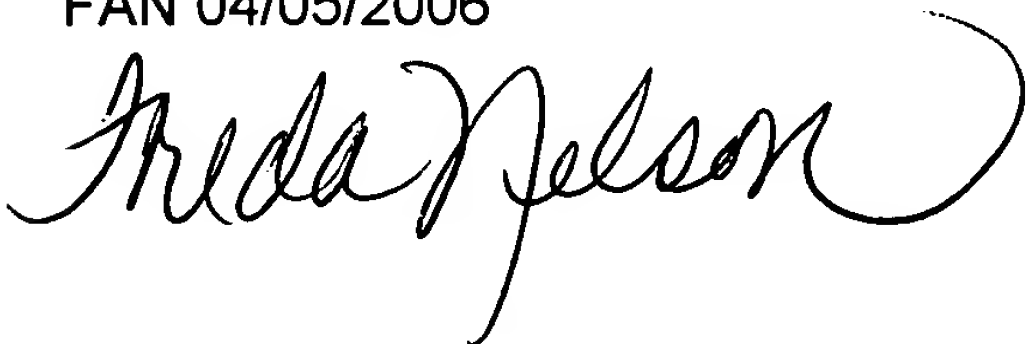


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 04/05/2006



**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**